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17 Linda T. Wong

18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 **LINDA T. WONG,**
21 Plaintiff,
22 v.
23 **NISSAN MOTOR**
24 **ACCEPTANCE**
25 **CORPORATION,**
26 Defendant.

27 **Case No.:**

28 **COMPLAINT FOR DAMAGES
FOR VIOLATION OF:**

- 29 1.) **TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C.
§ 227, ET SEQ.; AND,**
- 30 2.) **THE ROSENTHAL FAIR
DEBT COLLECTION
PRACTICES ACT, CAL. CIV.
CODE §§ 1788, ET SEQ.**

31 **JURY TRIAL DEMANDED**

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INTRODUCTION

1. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq, to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.
2. The California legislature has determined that the banking and credit system and grantors of credit to consumers are dependent upon the collection of just and owing debts and that unfair or deceptive collection practices undermine the public confidence that is essential to the continued functioning of the banking and credit system and sound extensions of credit to consumers. The Legislature has further determined that there is a need to ensure that debt collectors exercise this responsibility with fairness, honesty, and due regard for the debtor's rights and that debt collectors must be prohibited from engaging in unfair or deceptive acts or practices.¹
3. Plaintiff LINDA T. WONG ("Plaintiff") through Plaintiff's attorneys, brings this lawsuit to challenge the actions of Defendant NISSAN MOTOR ACCEPTANCE CORPORATION ("Defendant") with regard to attempts by Defendant, a debt collector, to unlawfully and abusively collect a debt allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.

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¹ Cal. Civ. Code §§ 1788.1 (a)-(b)

1 4. Moreover, the Telephone Consumer Protection Act (“TCPA”) was designed
2 to prevent calls and messages like the ones described within this complaint,
3 and to protect the privacy of citizens like Plaintiff. “Voluminous consumer
4 complaints about abuses of telephone technology – for example, computerized
5 calls dispatched to private homes – prompted Congress to pass the TCPA.”
6 *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

7 5. In enacting the TCPA, Congress intended to give consumers a choice as to
8 how creditors and telemarketers may call them, and made specific findings
9 that “[t]echnologies that might allow consumers to avoid receiving such calls
10 are not universally available, are costly, are unlikely to be enforced, or place
11 an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11.

12 Toward this end, Congress found that

13 [b]anning such automated or prerecorded telephone calls to the
14 home, except when the receiving party consents to receiving the
15 call or when such calls are necessary in an emergency situation
16 affecting the health and safety of the consumer, is the only
17 effective means of protecting telephone consumers from this
18 nuisance and privacy invasion.

19 *Id.* at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012
20 WL 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on
21 TCPA’s purpose).

22 6. Congress also specifically found that “the evidence presented to the Congress
23 indicates that automated or prerecorded calls are a nuisance and an invasion of
24 privacy, regardless of the type of call....” *Id.* at §§ 12-13. See also, *Mims*, 132
25 S. Ct. at 744

26 7. Plaintiff makes these allegations on information and belief, with the exception
27 of those allegations that pertain to a Plaintiff, or to a Plaintiff’s counsel, which
28 Plaintiff alleges on personal knowledge.

29 8. While many violations are described below with specificity, this Complaint
30 alleges violations of the statutes cited in their entirety.

1 9. Unless otherwise stated, Plaintiff alleges that any violations by Defendant
2 were knowing and intentional, and that Defendant did not maintain procedures
3 reasonably adapted to avoid any such violation.

4 10. Unless otherwise indicated, the use of any Defendant's name in this
5 Complaint includes all agents, employees, officers, members, directors, heirs,
6 successors, assigns, principals, trustees, sureties, subrogees, representatives,
7 and insurers of that Defendant named.

8 **JURISDICTION AND VENUE**

9 11. This Court has federal question jurisdiction because this case arises out of
10 violation of federal law. 15 U.S.C. § 1692k; 47 U.S.C. §227(b); *Mims v.*
11 *Arrow Fin. Servs., LLC*, 132 S. Ct. 740 (2012). In addition, this Court also
12 has jurisdiction of Plaintiff's supplemental State claims pursuant to 28 U.S.C.
13 § 1367.

14 12. This action arises out of Defendant's violations of (i) the Rosenthal Fair Debt
15 Collection Practices Act ("RFDCPA"), California Civil Code §§ 1788, et seq.;
16 and, (ii) the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227,
17 et seq.

18 13. Because Defendant conducts business within the State of California, personal
19 jurisdiction is established.

20 14. Venue is proper in the United States District Court, Central District of
21 California pursuant to 28 U.S.C. § 1391 for the following reasons: (i) Plaintiff
22 resides in the County of Orange, State of California, which is within this
23 judicial district; (ii) the conduct complained of herein occurred within this
24 judicial district; and, (iii) Defendant conducted business in this judicial district
25 at all times relevant.

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PARTIES

15. Plaintiff is a natural person who resides in the County of Orange, State of California, from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a “debtor” as that term is defined by California Civil Code § 1788.2(h).
16. In addition, Plaintiff and Defendant are each a “person” as defined by the TCPA.
17. Plaintiff is informed and believes, and thereon alleges, that Defendant is incorporated in the State of California and is located in the State of Texas.
18. Plaintiff is informed and believes, and thereon alleges, that Defendant, in the ordinary course of business, regularly, on behalf of themselves or others, engage in “debt collection” as that term is defined by California Civil Code § 1788.2(b), and are therefore “debt collectors” as that term is defined by California Civil Code § 1788.2(c).
19. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a “consumer debt” and “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

FACTUAL ALLEGATIONS

20. At all times relevant, Plaintiff is an individual residing within the State of California.
21. Plaintiff is informed and believes, and thereon alleges, that at all times relevant, Defendant conducted business in the State of California.
22. Sometime prior to May 2014, Plaintiff's now ex-husband, Kenneth Wong ("Mr. Wong"), allegedly incurred financial obligations to the original creditor, Defendant, that were money, property, or their equivalent, which are due or owing, or alleged to be due or owing, from a natural person to another person and were therefore "debt(s)" as that term is defined by California Civil Code

1 §1788.2(d), and a “consumer debt” as that term is defined by California Civil
2 Code §1788.2(f).

3 23. Mr. Wong incurred the alleged debt for Mr. Wong’s own purposes and
4 Plaintiff was not a signatory nor did Plaintiff agree to be obligated for Mr.
5 Wong’s alleged debt.

6 24. Sometime thereafter, Mr. Wong allegedly fell behind in the payments
7 allegedly owed on the alleged debt. Plaintiff disputes the validity of the
8 alleged debt.

9 25. As a result of Mr. Wong’s alleged delinquency, beginning in May 2014,
10 Plaintiff has received telephonic communications from Defendant attempting
11 to collect Mr. Wong’s alleged debt. These telephone calls constitute “debt
12 collection” as that phrase is defined by Cal. Civ. Code § 1788.2(b).

13 26. Since the calls began in May 2014, Defendant initiated more than 20
14 telephonic communications to Plaintiff’s cellular telephone.

15 27. During each call where Plaintiff was able to speak with Defendant’s
16 respective representatives, Plaintiff informed Defendant that Plaintiff did not
17 wish to receive further telephonic communications from Defendant regarding
18 Mr. Wong’s account.

19 28. Plaintiff alleges that Defendant made its telephonic communications to
20 Plaintiff from the following non-exhaustive list of telephone numbers: (800)
21 777-6116; (800) 888-2799; (213) 232-7900; and, (214) 596-5905.

22 29. Since Defendant’s first telephonic communication to Plaintiff, which was
23 made on May 12, 2014, Plaintiff has repeatedly informed Defendant that Mr.
24 Wong could not be reached through the dialed number, to stop calling, and to
25 remove Plaintiff’s cellular telephone numbers from Defendant’s database.

26 30. Despite Plaintiff’s requests to cease communications, Defendant continued to
27 call Plaintiff’s cellular telephone numbers in its attempt to collect Mr. Wong’s
28 alleged debt.

1 31. For the reasons discussed below, Defendant's repeated telephonic
2 communications to Plaintiff's cellular telephone violated both the TCPA and
3 RFDCPA since Defendant was attempting to collect an alleged debt from
4 Plaintiff not owed by Plaintiff.

5 32. Through this conduct, Defendant violated 15 U.S.C. § 1692d by engaging in
6 conduct the natural consequence of which is to harass, oppress and abuse
7 Plaintiff in connection with Plaintiff's alleged debt. This section is
8 incorporated into the RFDCPA through Cal. Civ. Code § 1788.17; thus,
9 Defendant also violated Cal. Civ. Code § 1788.17.

10 33. Through this conduct, Defendant violated 15 U.S.C. § 1692e by using false,
11 deceptive and misleading representations in connection with the collection of
12 Plaintiff's alleged debts. This section is incorporated into the RFDCPA
13 through Cal. Civ. Code § 1788.17; thus, Defendant also violated Cal. Civ.
14 Code § 1788.17.

15 34. Through this conduct, Defendant violated 15 U.S.C. § 1692e(2)(A) by using
16 false, deceptive and misleading representations in connection with the
17 collection of Plaintiff's alleged debt. This section is incorporated into the
18 RFDCPA through Cal. Civ. Code § 1788.17; thus, Defendant also violated
19 Cal. Civ. Code § 1788.17.

20 35. Through this conduct, Defendant violated 15 U.S.C. § 1692e(10) by using
21 false representations and deceptive means to collect Plaintiff's alleged debts.
22 This section is incorporated into the RFDCPA through Cal. Civ. Code §
23 1788.17; thus, Defendant also violated Cal. Civ. Code § 1788.17.

24 36. Through this conduct, Defendant violated 15 U.S.C. § 1692f by using unfair
25 and unconscionable means to collect Plaintiff's alleged debts. This section is
26 incorporated into the RFDCPA through Cal. Civ. Code § 1788.17; thus,
27 Defendant also violated Cal. Civ. Code § 1788.17.

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1 37. Through this conduct, Defendant was collecting an amount (including any
2 interest, fee, charge, or expense incidental to the principal obligation) when
3 such amount was not expressly authorized by the agreement creating the debt
4 or permitted by law. Consequently, Defendant violated 15 U.S.C. § 1692f(1).
5 This section is incorporated into the RFDCPA through Cal. Civ. Code §
6 1788.17; thus, Defendant also violated Cal. Civ. Code § 1788.17.

7 38. Furthermore, Defendant used an “automatic telephone dialing system”
8 (“ATDS”), as defined by 47 U.S.C. § 227(a)(1) to make its calls to Plaintiff
9 seeking to collect the alleged debt allegedly owed by Plaintiff in conjunction
10 with an “artificial or prerecorded voice” as prohibited by 47 U.S.C. §
11 227(b)(1)(A).

12 39. Plaintiff further alleges that Defendant utilized an ATDS due to the long
13 silence between Plaintiff answering the telephonic communications in
14 question and Defendant’s response. Such a delay is indicative of usage of an
15 ATDS and/or a predictive dialer.

16 40. This ATDS has the capacity to store or produce telephone numbers to be
17 called, using a random or sequential number generator.

18 41. At no time did Plaintiff ever enter into a business relationship with Defendant.

19 42. Defendant lacked “prior express consent” to utilize an ATDS or predictive
20 dialer to contact Plaintiff on Plaintiff’s cellular telephone.

21 43. Defendant’s calls constituted calls that were not for emergency purposes as
22 defined by 47 U.S.C. § 227(b)(1)(A)(i).

23 44. Defendant’s calls were placed to telephone number assigned to a cellular
24 telephone service for which Plaintiff incurs a charge for incoming calls
25 pursuant to 47 U.S.C. § 227(b)(1).

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CAUSE OF ACTION CLAIMED BY PLAINTIFF
COUNT I

VIOLATION OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

Cal. Civ. Code §§ 1788-1788.32 (RFDCPA)

[AGAINST ALL DEFENDANTS]

45. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
46. The foregoing acts and omissions constitute numerous and multiple violations of the RFDCPA.
47. As a result of each and every violation of the RFDCPA, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorneys fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from each Defendant individually.

COUNT II

NEGLIGENCE VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

47 U.S.C. § 227 ET SEQ.

48. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
49. The foregoing acts and omissions of Defendant constitutes numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.
50. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq, Plaintiffs is entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
51. Plaintiff is also entitled to and seeks injunctive relief prohibiting such conduct in the future.

COUNT III

KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

47 U.S.C. § 227 ET SEQ.

52. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

53. The foregoing acts and omissions of Defendant constitutes numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

54. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq, Plaintiffs is entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant for:

- An award of actual damages, in an amount to be determined at trial, pursuant to Cal. Civ. Code § 1788.30(a), against each named Defendant individually;
- An award of statutory damages of \$1,000.00, pursuant to Cal. Civ. Code § 1788.30(b), against each named Defendant individually;
- An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c), against each named Defendant individually;
- an award of statutory damages of \$500.00, pursuant to 47 U.S.C. § 227(b)(3)(B) and as a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), against each named Defendant individually;

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- an award of statutory damages of \$ 1,500.00, pursuant to 47 U.S.C. § 227(b)(3)(B) and as a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b)(1), against each named Defendant individually;
- an award of injunctive award prohibiting such conduct in the future, pursuant to 47 U.S.C. § 227(b)(3)(A);
- Any and all other relief that this Court deems just and proper.

TRIAL BY JURY

55. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: December 2, 2015

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: /s/ Matthew M. Loker
MATTHEW M. LOKER, ESQ.
ATTORNEY FOR PLAINTIFF